

11 M.D.B.,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL,

15 Defendant.

16 Case No. 19-cv-02435-LB

17 **ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

18 Re: ECF No. 16, 24, 30, 31

19 **INTRODUCTION**

20 The plaintiff, M.D.B., seeks judicial review of a final decision by the Commissioner of the
21 Social Security administration denying her claim for supplemental security income (“SSI”)
22 benefits under Title XVI of the Social Security Act (“SSA”).¹ This is her third petition to this
23 court and follows two previous remands to the agency. The plaintiff moved for summary
24 judgment.² The Commissioner opposed the motion and filed a cross-motion for summary
25 judgment.³ Under Civil Local Rule 16-5, the matter is submitted for decision by this court without

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¹ Compl. – ECF No. 1; Pl. Mot. – ECF No. 24-1. Citations refer to material in the Electronic Case File
27 (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Pl. Mot. – ECF No. 24-1.

³ Cross-Mot. – ECF No. 30.

1 oral argument. All parties consented to magistrate-judge jurisdiction.⁴ The court grants the
2 plaintiff's motion for summary judgment, denies the Commissioner's cross motion, and remands
3 for the calculation and award of benefits.

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5 STATEMENT

6 1. Procedural History

7 The plaintiff filed for SSI benefits under Title XVI on February 13, 2012, alleging
8 fibromyalgia, post-traumatic stress disorder ("PTSD"), depression, and anxiety.⁵ Her application
9 was denied initially and on reconsideration.⁶ Following an administrative hearing, the
10 administrative law judge ("ALJ") issued an unfavorable decision on September 25, 2013.⁷ The
11 Appeals Council denied her request for review on December 9, 2014.⁸ The plaintiff timely
12 appealed to the district court.⁹ On December 14, 2015, Magistrate Judge Jacqueline Scott Corley
13 granted in part the plaintiff's motion for summary judgment and remanded the case for further
14 proceedings.¹⁰

15 On remand, the plaintiff had another administrative hearing before a different ALJ on August
16 9, 2016.¹¹ On October 14, 2016, the ALJ issued an unfavorable decision.¹² The plaintiff appealed

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⁴ Consents – ECF Nos. 10, 18.

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⁵ AR 44.

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⁶ AR 54, 71.

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⁷ AR 9.

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⁸ AR 1.

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⁹ AR 500–03.

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¹⁰ AR 504; *Cox v. Colvin*, No. 15-cv-00190-JSC, 2015 WL 8596436, at *1 (N.D. Cal. Dec. 14, 2015).

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¹¹ AR 446–78.

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¹² AR 415.

1 to the district court.¹³ On March 29, 2018, District Judge William Alsup granted in part the
2 plaintiff's motion for summary judgment and remanded the case again for further proceedings.¹⁴

3 After the second remand, the ALJ held a hearing on November 13, 2018, and heard testimony
4 from the plaintiff and vocational expert ("VE") Ronald Fleck.¹⁵ The ALJ issued another
5 unfavorable decision on January 16, 2019.¹⁶ The ALJ's decision became final on April 17, 2019.¹⁷
6 The plaintiff timely filed this action for judicial review and filed a motion for summary
7 judgment.¹⁸ The Commissioner filed a cross-motion for summary judgment.¹⁹

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9 **2. Summary of Administrative Records**

10 **2.1 Medical Records**

11 The plaintiff's appeal involves her challenge to the ALJ's assessments of the medical opinions
12 from the following sources: (1) treating physician Robert Gardner, M.D.; (2) treating physician's
13 assistant ("P.A.") Joseph Geare; (3) treating counselor Deborah Johnson, LCSW; (4) examining
14 psychiatrist Daniel Mandelbaum, M.D.; (5) examining psychologist Philip Cushman, Ph.D.; (6)
15 examining psychologist Melody Samuelson, Psy.D.; (7) examining psychologist Molly Malone,
16 Psy.D.; and (8) examining physician Soheila Benrazavi, M.D.²⁰ The record in the case exceeds
17 2000 pages.²¹ Judge Corley summarized the record to 2013, including the opinions of
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20¹³ AR 1493–96.

21¹⁴ AR 1497–1504; *Cox v. Berryhill*, No. C 16-07183-WHA, 2018 WL 1536668, at *1 (N.D. Cal. Mar.
22 29, 2018).

23¹⁵ AR 1392–1413.

24¹⁶ AR 1352.

25¹⁷ AR 1353 ("If you do not file written exceptions [to the Appeals Council] . . . my decision will
26 become final on the 61st day following the date of this notice").

27¹⁸ Compl. – ECF No. 1; Pl. Mot. – ECF No. 24-1.

28¹⁹ Cross-Mot. – ECF No. 30.

²⁰ Pl. Mot. – ECF No. 24-1 at 26–34.

²¹ AR 1–2020.

1 Drs. Gardner, Mandelbaum, and Cushman.²² The court incorporates that summary by this
 2 reference and recounts only the evidence that post-dates the record available to Judge Corley.²³

3 **2.1.1 Lucerne Community Clinic**

4 **2.1.1.1 Joseph Geare, P.A. — Treating**

5 The plaintiff regularly saw Joseph Geare, P.A., from 2012 to 2018, often on a bimonthly or
 6 monthly basis.²⁴ Throughout these visits, P.A. Geare reported diagnoses including the following:
 7 fibromyalgia, PTSD, anxiety, bipolar affect, panic disorder, depressive disorder, insomnia,
 8 lumbar-disc degeneration, and other pain-related disorders.²⁵

9 P.A. Geare noted that on some visits the plaintiff did not appear to be in “acute distress.”²⁶ On
 10 other visits, he reported the plaintiff’s anxiety, agitation, pain, and tearfulness.²⁷ For example, on
 11 October 20, 2014, P.A. Geare noted the plaintiff’s fibromyalgia, insomnia, anxiety, and
 12 hypertension and said that she was “in distress secondary to pain and anxious.”²⁸ His diagnosis
 13 reflected her fibromyalgia, anxiety state, benign hypertension, and PTSD.²⁹ He prescribed Lyrica
 14 and Norco.³⁰ On October 27, 2015, P.A. Geare noted that the plaintiff was in acute distress,

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 17 ²² AR 505–511.

18 ²³ The record also contains duplicate copies of the medical evidence. *See, e.g.* AR 1287–89 (May 3,
 19 2016 visit notes by Joseph Geare, P.A.); AR 1684–86 (same); AR 1837–39 (same). This order cites
 20 only the first copy of any duplicate record.

21 ²⁴ AR 506–508 (describing “regular” visits with P.A. Geare throughout 2012); AR 803–1017 (visits
 22 from September 2013 to January 2015); AR 1053–67 (February 2015 to May 2015); AR 1172–80
 23 (June 2015 to July 2015); AR 1204–34 (August 2015 to February 2016); AR 1276–1301 (March 2016
 24 to July 2016); AR 1699–1737 (August 2016 to June 2017); AR 1888–96 (June 2017 to August 2017);
 25 AR 1753–55 (September 2017); AR 1901–09 (September 2017 to November 2017); AR 1767–69
 26 (November 2017); AR 1913–62 (December 2017 to September 2018); AR 2009–16 (October 2018).

27 ²⁵ *See, e.g.*, AR 806, 809, 812, 824, 833, 988, 992–93, 1054, 1176, 1229, 1300, 1721, 1914, 1936,
 28 1951, 1958, 2014.

29 ²⁶ *See, e.g.*, AR 1667, 1670, 1677, 1681, 1685, 1688, 1694, 1744, 1747, 1754, 1757, 1765, 1817, 1831,
 30 1834, 1856, 1873, 1877, 1948, 2010, 2014.

31 ²⁷ *See, e.g.*, AR 805, 814, 824, 833, 842, 845, 981, 1000, 1007, 1011, 1062, 1065, 1212, 1293, 1700,
 32 1707, 1715, 1896, 1908, 1958, 1960.

33 ²⁸ AR 980–81.

34 ²⁹ *Id.*

35 ³⁰ AR 982.

1 anxious and tearful, and in shock due to her husband's suicide by hanging.³¹ On August 25, 2017,
2 the plaintiff said that she "has started to hear voices" and was "[v]ery upset."³² P.A. Geare
3 observed evidence of distress and described the plaintiff as "agitated and anxious."³³ He diagnosed
4 her with anxiety disorder, chronic PTSD, and fibromyalgia.³⁴ He prescribed Lexapro, Norco,
5 Restoril, and Valium.³⁵ On October 4, 2018, he described the plaintiff as "depressed and manic."³⁶
6 She reported that she had been up all night cleaning.³⁷ She cried through the appointment and
7 "talk[ed] about suicide."³⁸ As to her general appearance, P.A. Geare recorded "no acute
8 distress."³⁹ He reported the following diagnoses: fibromyalgia, low-back pain, PTSD, panic
9 disorder, and chronic-pain syndrome.⁴⁰ He prescribed Lyrica, Norco, and Valium.⁴¹

10 P.A. Geare completed two medical-source statements for the plaintiff.

11 The August 4, 2016 statement reflected that the plaintiff (1) "suffers from severe and chronic
12 fatigue, myalgias, anxiety and depression, even though clinic notes . . . are not always indicative of
13 these conditions" and (2) suffers from intermittent severe pain on a daily basis.⁴² The plaintiff
14 could walk one city block without rest, sit for 10 minutes at a time, and stand for 15 minutes at a
15 time.⁴³ The plaintiff could sit, stand, and walk for fewer than two hours in an eight-hour working

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19³¹ AR 1211.

20³² AR 1896.

21³³ *Id.*

22³⁴ *Id.*

23³⁵ *Id.*

24³⁶ AR 2009.

25³⁷ *Id.*

26³⁸ *Id.*

27³⁹ AR 2010.

28⁴⁰ *Id.*

⁴¹ *Id.*

⁴² AR 1329, 1332.

⁴³ *Id.*

1 day.⁴⁴ The plaintiff would not be able to lift 10 pounds in a competitive work situation.⁴⁵ She
2 would rarely be able to twist, stoop, and crouch and would never be able to climb ladders and
3 stairs.⁴⁶ She had limits to her head's range of motion.⁴⁷ The plaintiff would likely be off task 25%
4 or more of the time.⁴⁸ The plaintiff was "incapable of even 'low stress' work," and would likely
5 miss work more than four days per month.⁴⁹

6 The October 11, 2018 statement listed the following diagnoses—fibromyalgia, low-back pain,
7 chronic-pain syndrome, PTSD, panic disorder, and depression — and noted that the plaintiff's
8 anxiety, depression, and other psychological factors affected her physical conditions.⁵⁰ This
9 statement is similar to the August 2016 statement except that it said that the plaintiff could sit for
10 20 minutes and stand for 15 minutes at a time.⁵¹ P.A. Geare also noted that the plaintiff could
11 occasionally lift and carry 10 pounds in a competitive work situation and occasionally climb
12 stairs.⁵² She would be off task 25% or more of the time, was incapable of low-stress work, and
13 would miss work more than four days a month.⁵³

14 **2.1.1.2 Deborah Johnson, LCSW — Treating**

15 Between 2014 and 2016, the plaintiff saw licensed clinical social-worker Deborah Johnson for
16 psychotherapy twice a month for treatment for her bipolar disorder.⁵⁴ Ms. Johnson documented the
17 plaintiff's mood swings and advised the plaintiff to monitor her moods and take her prescribed
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20 ⁴⁴ AR 1329–30.

21 ⁴⁵ AR 1330

22 ⁴⁶ *Id.*

23 ⁴⁷ *Id.*

24 ⁴⁸ AR 1331.

25 ⁴⁹ *Id.*

26 ⁵⁰ AR 2017–18.

27 ⁵¹ *Id.*

28 ⁵² AR 2019.

⁵³ AR 2020.

⁵⁴ AR 1237–1275.

1 medicine because her moods and anxiety tended to be more stable when she took them.⁵⁵ The
2 plaintiff struggled after her husband's suicide and on October 28, 2015 reported guilt and shock.⁵⁶
3 A week later, the plaintiff was experiencing a hypomanic episode from her bipolar disorder.⁵⁷
4 Ms. Johnson documented the plaintiff's depression and struggles with eating and sleeping
5 enough.⁵⁸

6 Ms. Johnson completed two medical-source statements for the plaintiff.

7 The July 28, 2016 statement described the plaintiff's diagnoses of bipolar disorder and PTSD,
8 and the associated symptoms.⁵⁹ For the plaintiff's mental abilities necessary for unskilled work,
9 Ms. Johnson marked the following areas as "seriously limited": (1) ability to complete a normal
10 workday and workweek without interruption from psychologically based symptoms; (2) ability to
11 perform at a consistent pace without unreasonable rest periods; (3) ability to accept instructions
12 and respond to criticism from supervisors; (4) ability to respond to changes in a routine work
13 environment; and (5) ability to deal with normal work stress.⁶⁰ For her ability to engage in
14 semiskilled or skilled work, the plaintiff's abilities to understand, remember, and carry out
15 detailed instructions were seriously limited.⁶¹ The plaintiff's abilities to travel to an unfamiliar
16 place and to use public transportation were seriously limited.⁶² Ms. Johnson marked "unlimited"
17 or "limited by satisfactory" for other mental abilities.⁶³

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⁵⁵ See, e.g., AR 1238, 1243, 1245, 1252.

⁵⁶ AR 1259–1264.

⁵⁷ AR 1260.

⁵⁸ AR 1260–1263.

⁵⁹ AR 771–76.

⁶⁰ AR 773.

⁶¹ AR 774.

⁶² *Id.*

⁶³ AR 773–71.

1 Based on the plaintiff's impairments, Ms. Johnson said that the plaintiff would miss work
2 more than four days per month.⁶⁴ She also said that the plaintiff's anxiety would exacerbate her
3 pain and other physical symptoms.⁶⁵

4 The October 4, 2018 statement found marked limitations in the following areas: (1) ability to
5 understand, remember, and apply information; (2) ability to interact with others; (3) ability to
6 concentrate, persist, or maintain pace; and (4) ability to adapt or manage oneself.⁶⁶ The plaintiff
7 would miss work more than four days a month and would have difficulty working at a regular job
8 on a sustained basis because she "can't 'gauge' her day due to frequent mood swings."⁶⁷

9 **2.1.2 Avatar Medical**

10 **2.1.2.1 Melody Samuelson, Psy.D. — Examining**

11 On April 12, 2015, Melody Samuelson, Psy.D., conducted a psychiatric examination of the
12 plaintiff.⁶⁸ She noted that her findings were "based on information gathered during this one time-
13 limited mental-status evaluation."⁶⁹

14 The plaintiff's chief complaints during this session were pain, panic attacks, depression, and
15 generalized anxiety disorder.⁷⁰ She described having daily panic attacks and experiencing chronic
16 depression and PTSD.⁷¹ She denied psychiatric hospitalization in the past but had psychiatric and
17 psychological treatment, and she was taking Lexapro, Valium, Lyrica, and Vicodin.⁷² Dr.
18 Samuelson noted the plaintiff's history of physical, sexual, and emotional abuse throughout her
19 childhood and her history of fibromyalgia.⁷³

20
21 ⁶⁴ AR 775.

22 ⁶⁵ AR 774.

23 ⁶⁶ AR 2002.

24 ⁶⁷ AR 2004.

25 ⁶⁸ AR 1021–27.

26 ⁶⁹ AR 1021.

27 ⁷⁰ AR 1022.

28 ⁷¹ *Id.*

29 ⁷² AR 1022–23.

30 ⁷³ *Id.*

1 The plaintiff was “average groomed,” “coherent[,] and organized.”⁷⁴ Her thought content was
2 “relevant and non-delusional.”⁷⁵ Her mood was “moderately depressed[,] and her affect [was] flat
3 and congruent with thought content.”⁷⁶ The plaintiff denied suicidal ideation.⁷⁷ Dr. Samuelson
4 described the plaintiff as “alert and oriented.”⁷⁸ The plaintiff was able to “recall four items
5 immediately upon presentation” and to recall them after some delay.⁷⁹ For “fund of knowledge,”
6 the plaintiff “was able to recall the current President of the United States” and describe who
7 Martin Luther King, Jr. was.⁸⁰ Dr. Samuelson reported that the plaintiff could count numbers and
8 months backwards slowly but “was not able to attend without repeating instructions.”⁸¹ She did
9 not observe any difficulty in the plaintiff’s calculation ability.⁸² Her insight and judgment were
10 “intact.”⁸³

11 Dr. Samuelson reported the following diagnostic impressions: (1) major depressive disorder;
12 (2) panic disorder without agoraphobia; (3) pain disorder due to a general medical condition; (4)
13 chronic PTSD; and (5) generalized anxiety disorder.⁸⁴ The plaintiff would benefit from “continued
14 psychiatric treatment and counseling” and “a medical evaluation” to assess her fibromyalgia.⁸⁵

15 Dr. Samuelson concluded that the plaintiff “should have no difficulty performing simple and
16 repetitive tasks.”⁸⁶ She found that the plaintiff would have mild difficulty in the following areas:

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18 ⁷⁴ AR 1024.
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20 ⁷⁵ *Id.*
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22 ⁷⁶ *Id.*
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24 ⁷⁷ *Id.*
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26 ⁷⁸ AR 1025.
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28 ⁷⁹ *Id.*
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30 ⁸⁰ *Id.*
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32 ⁸¹ *Id.*
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34 ⁸² *See id.*
35

36 ⁸³ *Id.*
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38 ⁸⁴ AR 1025–26.
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40 ⁸⁵ AR 1026.
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42 ⁸⁶ *Id.*
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1 (1) performing complex and detailed tasks; (2) working with the public, supervisors, and co-
2 workers; and (3) maintaining attention, concentration, persistence, and pace.⁸⁷ She reported mild
3 impairments in the following areas: (1) ability to “associate with day-to-day work activity,
4 including attendance and safety, depending on her level of depression and anxiety on a given day;”
5 (2) ability to accept instructions from supervisors and maintain regular attendance; and (3) ability
6 to “perform work activities without special or additional supervision.”⁸⁸ Overall, the plaintiff
7 appeared genuine and did not feign symptoms.⁸⁹

8 **2.1.2.2 Molly Malone, Psy.D. — Examining**

9 On January 18, 2018, Molly Malone, Psy.D., performed a comprehensive mental-status
10 evaluation of the plaintiff.⁹⁰

11 The plaintiff’s chief complaints were depression, anxiety with panic attacks, and PTSD.⁹¹ She
12 reported a history of suicide attempts but denied any prior psychiatric hospitalization and denied
13 “current suicidal and homicidal ideation.”⁹² As for her current level of functioning, the plaintiff
14 said that she did not need help with preparing meals.⁹³

15 Dr. Malone reported that the plaintiff’s attention was “limited” and her concentration and
16 memory were “poor.”⁹⁴ For example, she noted that the plaintiff “made 0 errors spelling ‘world’
17 forward[,] [] was unable to spell it in reverse . . . [and] was not able to complete serial 3’s
18 adequately.”⁹⁵ Her calculation was “poor,” and “[w]hen asked how much change she would expect
19 back from a five dollar bill if an item cost \$1.50, claimant reported, ‘I don’t know.’”⁹⁶ The

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21 ⁸⁷ *Id.*

22 ⁸⁸ *Id.*

23 ⁸⁹ AR 1027.

24 ⁹⁰ AR 1795.

25 ⁹¹ *Id.*

26 ⁹² AR 1796.

27 ⁹³ *Id.*

28 ⁹⁴ AR 1797.

⁹⁵ *Id.*

⁹⁶ *Id.*

1 plaintiff's mood was "anxious" and her affect was "labile."⁹⁷ Dr. Malone diagnosed the plaintiff
2 with borderline personality disorder, PTSD, persistent depressive disorder, and unspecified
3 anxiety disorder, with panic attacks.⁹⁸

4 Dr. Malone documented that the plaintiff's "limitations in work and social functioning are
5 significant."⁹⁹ She found that the plaintiff's "ability to perform simple and repetitive tasks is
6 mildly impaired."¹⁰⁰ The plaintiff's ability to do work without special or additional supervision
7 was "moderately impaired."¹⁰¹ Dr. Malone concluded that the plaintiff's ability to perform
8 complex tasks, maintain regular work attendance, accept instructions from supervisors, and
9 interact with coworkers and the public was moderately to significantly impaired.¹⁰² She also found
10 the following significant impairments: (1) ability to work on a consistent basis; (2) ability to
11 complete a normal workday without interruptions; and (3) ability to handle "usual stresses
12 encountered in competitive work environment."¹⁰³

13 **2.1.2.3 Soheila Benrazavi, M.D. — Examining**

14 Soheila Benrazavi, M.D., conducted an internal-medicine evaluation of the plaintiff on January
15 19, 2018.¹⁰⁴ The plaintiff complained of her fibromyalgia and back pain.¹⁰⁵ Dr. Benrazavi
16 reviewed the following medical records: (1) a lumbar CT scan dated May 5, 2017; (2) a C-spine
17 CT scan (no dates noted); and (3) a record dated October 19, 2017 "regarding presentation with
18 back pain; diagnosis of fibromyalgia and anxiety."¹⁰⁶

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⁹⁷ *Id.*

22 ⁹⁸ AR 1798.

23 ⁹⁹ AR 1799.

24 ¹⁰⁰ AR 1798.

25 ¹⁰¹ *Id.*

26 ¹⁰² *Id.*

27 ¹⁰³ *Id.*

28 ¹⁰⁴ AR 1802–1806.

¹⁰⁵ AR 1802.

¹⁰⁶ AR 1805.

1 Dr. Benrazavi observed the plaintiff to be “somewhat anxious” and with “no acute distress at
2 the time of the examination.”¹⁰⁷ She reported “grossly normal bilaterally” for the plaintiff’s range
3 of motion in her shoulders, elbows, wrists, hips, and ankles.¹⁰⁸ Plaintiff’s lumbar spine was
4 negative for spasms or deformity.¹⁰⁹ Dr. Benrazavi reported “no tenderness” and a range of motion
5 for the lumbar spine of “mildly decreased.”¹¹⁰ The plaintiff’s knees showed normal limits in
6 motion and no instability.¹¹¹

7 Dr. Benrazavi said that the plaintiff would be able to “lift and carry 20 pounds occasionally
8 and 10 pounds frequently,” could sit, stand, and walk six hours in an eight-hour workday, and
9 could occasionally stoop and climb.¹¹²

10 **2.2 Non-Medical Evidence**

11 The record has statements from the following third parties: (1) the plaintiff’s sister; (2) the
12 plaintiff’s former husband; (3) the plaintiff’s fiancé; and (4) the plaintiff’s mother.

13 **2.2.1 Sister’s Statement**

14 The plaintiff’s sister completed a function report on April 15, 2012.¹¹³ She said that the
15 plaintiff, as a single mom, always needed someone to help her manage daily life.¹¹⁴ The plaintiff
16 did not have problems with personal care but needed reminders from others to take medication and
17 to eat or sleep regularly.¹¹⁵ The plaintiff prepared her own food and was able to do household
18 chores such as cleaning, laundry, and getting groceries.¹¹⁶

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21 ¹⁰⁷ AR 1803.
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23 ¹⁰⁸ AR 1804.
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25 ¹⁰⁹ AR 1805.
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27 ¹¹⁰ *Id.*
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¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ AR 181–88.

¹¹⁴ See AR 181–82.

¹¹⁵ AR 183.

¹¹⁶ AR 183–84.

1 The plaintiff did not go out when she was depressed and was anxious when she was out by
2 herself.¹¹⁷ The plaintiff was able to pay her own bills, manage a checkbook and a savings account,
3 and count change.¹¹⁸ The plaintiff did not spend time with others due to “extreme anxiety when
4 around groups of people.”¹¹⁹ Her anxiety isolated her from family and friends, and she “cut off
5 social circles.”¹²⁰

6 The plaintiff’s conditions affected her ability to lift, walk, squat, sit, and bend, her memory
7 and concentration, and her ability to get along with others.¹²¹ The plaintiff struggled in social
8 situations and did “not handle stress well at all.”¹²² Changes in her routine upset her.¹²³ The
9 plaintiff “functions well when taking her medication and meeting with [her] therapist.”¹²⁴ The
10 plaintiff did not handle crisis well, and “not a day passes where [the plaintiff] does not have to
11 make an adaptation to her life due to her anxiety.”¹²⁵ The plaintiff “struggles with sleeping and
12 eating due to anxiety.”¹²⁶

13 **2.2.2 Husband’s Statement**

14 The plaintiff’s husband said that the plaintiff was only able to do a few physical activities,
15 such as doing the dishes and bathing her children.¹²⁷ The husband took care of other activities,
16 such as driving the children to school, laundry, cleaning, shopping, and other manual labor.¹²⁸ He
17 described having to learn the plaintiff’s “triggers” and said that they took it “day to day” based on
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19 ¹¹⁷ AR 184.

20 ¹¹⁸ *Id.*

21 ¹¹⁹ AR 185.

22 ¹²⁰ AR 186.

23 ¹²¹ *Id.*

24 ¹²² AR 187.

25 ¹²³ *Id.*

26 ¹²⁴ AR 188.

27 ¹²⁵ *Id.*

28 ¹²⁶ *Id.*

29 ¹²⁷ AR 214. The statement is undated.

30 ¹²⁸ *Id.*

1 how the plaintiff was feeling.¹²⁹ He noted that the plaintiff's sensitivity to touch on various parts
2 of her body.¹³⁰

3 2.2.3 Fiancé's Statement

4 The plaintiff's fiancé submitted a functions report on February 8, 2015.¹³¹ The plaintiff was
5 "always [] in pain" and experienced daily nightmares.¹³² She was able to care for her children and
6 herself (but required verbal reminders to take medicine).¹³³ The plaintiff did not go out and could
7 not do physical activities.¹³⁴ She was able to do housework, such as laundry and dishes with help
8 from others.¹³⁵ The plaintiff was able to go outside by herself, shop in stores, and manage her
9 money.¹³⁶ She struggled to physically keep up with her children.¹³⁷ The plaintiff did not spend
10 time with others and shut down around others.¹³⁸

11 The plaintiff's impairments affected her ability to lift, walk, climb stairs, squat, sit, bend,
12 kneel, stand, and reach, her memory, and concentration, and her ability to get along with others
13 and complete tasks.¹³⁹ The plaintiff struggled to handle changes in her routine and required her
14 fiancé's help physically and mentally every day.¹⁴⁰

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19 ¹²⁹ *Id.*

20 ¹³⁰ *Id.*

21 ¹³¹ AR 721–29.

22 ¹³² AR 721.

23 ¹³³ AR 722–23.

24 ¹³⁴ *Id.*

25 ¹³⁵ AR 723.

26 ¹³⁶ AR 724.

27 ¹³⁷ AR 725.

28 ¹³⁸ AR 725–26.

¹³⁹ AR 726.

¹⁴⁰ AR 727–28.

2.2.4 Mother's Statement

On July 23, 2016, the plaintiff's mother submitted a statement attesting that she helps the plaintiff with her everyday life by taking her to her doctor's appointments and helping with chores such as cleaning, cooking, and childcare "on a regular basis."¹⁴¹

3. Administrative Proceedings**3.1 Disability-Determination Explanation (DDE)**

The most recent DDE was in February 2018.¹⁴² Non-examining doctors reviewed the record and determined that the plaintiff was not disabled.¹⁴³

The non-examining doctors found that the plaintiff had the following severe impairments: (1) back-discogenic and degenerative disorders and (2) anxiety and obsessive-compulsive disorder.¹⁴⁴ They determined that the impairments were not severe enough to prevent her from working.¹⁴⁵ Laurence Ligon, M.D., analyzed the plaintiff's physical residual-functional capacity ("RFC").¹⁴⁶ He opined that the plaintiff could occasionally lift or carry 20 pounds, frequently lift or carry 10 pounds, and stand, walk, and sit for a total of six hours out of an eight-hour workday.¹⁴⁷ She had postural limitations and could occasionally climb ramps, stairs, ladders, ropes, and scaffolds.¹⁴⁸ She could occasionally stoop, kneel, crouch, and crawl, and could frequently balance.¹⁴⁹ She did not have manipulative, visual, communicative, or environmental limitations.¹⁵⁰

¹⁴¹ AR 750.

¹⁴² AR 1476–1492.

¹⁴³ AR 1491.

¹⁴⁴ AR 1483.

¹⁴⁵ AR 1491.

¹⁴⁶ AR 1486–87.

¹⁴⁷ AR 1486.

¹⁴⁸ *Id.*

¹⁴⁹ AR 1486–87.

¹⁵⁰ AR 1487.

1 Matthew Comrie, Psy.D., assessed the plaintiff's mental RFC.¹⁵¹ He found that the plaintiff's
2 ability to understand and remember detailed instructions was moderately limited.¹⁵² She had
3 various moderate limitations in her concentration and persistence, including her ability to (1) carry
4 out detailed instructions, (2) maintain attention and concentration for extended periods, (3) work
5 in coordination with others without being distracted by them, and (4) complete a normal workday
6 and workweek without interruptions from psychologically based symptoms.¹⁵³ Her ability to
7 interact appropriately with the general public was moderately limited.¹⁵⁴ She had moderate
8 limitation in her ability to respond to changes in the work setting.¹⁵⁵

9 Because her conditions were not severe enough, both non-examining doctors concluded that
10 the plaintiff could adjust to other work and was therefore not disabled.¹⁵⁶

11 **3.2 Administrative Hearings**

12 There have been three administrative hearings in this case: on August 14, 2013,¹⁵⁷ August 9,
13 2016,¹⁵⁸ and November 13, 2018.¹⁵⁹ Judge Corley summarized the initial hearing (and the court
14 incorporates that summary by this reference).¹⁶⁰ The next sections summarize the second and third
15 hearings.

16 **3.2.1 August 9, 2016 Hearing**

17 The ALJ heard testimony from the plaintiff and VE Antonio Reyes.¹⁶¹

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¹⁵¹ AR 1489.

21 ¹⁵² AR 1487.

22 ¹⁵³ AR 1487–88.

23 ¹⁵⁴ AR 1488.

24 ¹⁵⁵ AR 1489.

25 ¹⁵⁶ AR 1491.

26 ¹⁵⁷ AR 28.

27 ¹⁵⁸ AR 1414.

28 ¹⁵⁹ AR 1390.

29 ¹⁶⁰ AR 512–13.

30 ¹⁶¹ AR 1415–16.

3.2.1.1 The Plaintiff's Testimony

The ALJ questioned the plaintiff. The plaintiff said that she received some benefits, such as food stamps, to help support herself and her children.¹⁶² Her sister helped her with grocery shopping because she did not handle stress or being around people well.¹⁶³ She described attending therapy and taking medication for her sleep problems, mental conditions, and fibromyalgia.¹⁶⁴ She described her history of methamphetamine use from age 11 until age 18.¹⁶⁵ She relapsed in 2010 but had been sober since then.¹⁶⁶

The plaintiff managed a checking account and paid her bills.¹⁶⁷ The ALJ expressed skepticism about whether the plaintiff's mother helped care for the plaintiff's children because the record contained complaints about the mother's "being high all the time."¹⁶⁸ The plaintiff said that she did not have other options and did not leave her children alone with her mother.¹⁶⁹

The plaintiff's representative also questioned the plaintiff. The plaintiff testified that she started experiencing chronic pain as a child.¹⁷⁰ She receives treatment at the Lucerne Clinic for her psychological and physical conditions.¹⁷¹ The father of her children, her sister, and her mother all help her to take care of her children.¹⁷² Her pain made it difficult to pick up her children or sit or stand for too long.¹⁷³ To get through the day, the plaintiff had to write everything down because

¹⁶² AR 1422.

¹⁶³ AR 1426.

¹⁶⁴AR 1426-27.

¹⁶⁵ AR 1428.

¹⁶⁶ AR 1429.

¹⁶⁷ AR 1437.

¹⁶⁸ AR 1438.

169 *Id.*

170 AR 1430.

171 *Id.*

172 AR 1431-

¹⁷³ AR 1432-

1 otherwise she forgot to do things.¹⁷⁴ She has struggled with self-harm behavior, such as cutting, all
2 of her life.¹⁷⁵

3 3.2.2 November 13, 2018 Hearing

4 The ALJ heard testimony from the plaintiff and VE Ronald Fleck.¹⁷⁶

5 3.2.2.1 The Plaintiff's Testimony

6 The plaintiff testified that her conditions had “declined more rapidly” since the last
7 administrative hearing.¹⁷⁷ She described being “sensitive to just everything.”¹⁷⁸ For example, she
8 could not handle backrubs from her children because of her sensitivity to touch.¹⁷⁹ Her “pain level
9 is horrible.”¹⁸⁰ Sometimes she felt okay one minute, and then would be in pain the next minute.¹⁸¹
10 She took Lyrica for her fibromyalgia but experienced side effects including insomnia and weight
11 gain.¹⁸² She has back problems and cannot sit or stand for very long.¹⁸³ As a result, her son and
12 sister helped with household chores such as washing the dishes.¹⁸⁴ Her psychological conditions
13 also had worsened.¹⁸⁵

14 3.2.2.2 VE's Testimony

15 The ALJ posed hypotheticals to the VE.

16 First, she asked the VE to assume an individual, of plaintiff's age and education, who was
17 limited to “light work . . . occasional stoop, kneel, crouch and crawl[,] simple repetitive tasks[,]”

19 ¹⁷⁴ AR 1435.

20 ¹⁷⁵ *Id.*

21 ¹⁷⁶ AR 1392–1413.

22 ¹⁷⁷ AR 1400.

23 ¹⁷⁸ AR 1401.

24 ¹⁷⁹ *Id.*

25 ¹⁸⁰ AR 1402.

26 ¹⁸¹ *See id.*

27 ¹⁸² AR 1403

28 ¹⁸³ AR 1404–05.

¹⁸⁴ AR 1405–06.

¹⁸⁵ AR 1402.

1 [and] occasional interaction with the public.”¹⁸⁶ The VE said that such a person could work as a
2 mail clerk, an ampoule filler, or a racker in a bakery.¹⁸⁷

3 The ALJ added the following restrictions to the hypothetical: sedentary work; repetitive tasks
4 not at a fast pace; few changes in the workday; simple work-related decisions; and occasional
5 interactions with coworkers.¹⁸⁸ The VE responded that, with these limitations, the person could be
6 an addresser, a loader, or a blancher.¹⁸⁹ Under either of the two previous hypotheticals, if the
7 person were off-task 20% of the workday, then there would be no jobs available in the national
8 economy.¹⁹⁰

9 **3.3 ALJ Findings**

10 The ALJ followed the five-step sequential evaluation process to determine whether the
11 plaintiff was disabled and concluded that she was not.¹⁹¹

12 At step one, the ALJ found that the plaintiff had not engaged in substantial gainful activity
13 since February 13, 2012.¹⁹²

14 At step two, the ALJ found that the plaintiff had the following severe impairments:
15 degenerative-disc disease, back osteoarthritis, fibromyalgia, bipolar disorder, PTSD, generalized
16 anxiety disorder, and borderline-personality disorder.¹⁹³ She found the following impairments to
17 be non-severe: headaches, insomnia, pelvic cyst, obesity, and polysubstance abuse.¹⁹⁴

18 At step three, the ALJ concluded that the plaintiff did not have an impairment or combination
19 of impairments that met or medically equaled the severity of one of the listed impairments in the

21 ¹⁸⁶ AR 1407.

22 ¹⁸⁷ AR 1407–08.

23 ¹⁸⁸ AR 1408.

24 ¹⁸⁹ AR 1408–09.

25 ¹⁹⁰ AR 1409.

26 ¹⁹¹ AR 1352–79. Judges Corley and Alsup summarized the earlier ALJ decisions. *See* AR 513–15,
1498–99.

27 ¹⁹² AR 1358.

28 ¹⁹³ *Id.*

29 ¹⁹⁴ *Id.*

1 regulations.¹⁹⁵ For the plaintiff's mental impairments, ALJ found moderate limitations in the
2 following: (1) ability to understand, remember, or apply information; (2) ability to interact with
3 others; and (3) concentration, persistence, or maintenance of pace.¹⁹⁶ The plaintiff's ability to
4 adapt or manage oneself was mildly limited.¹⁹⁷

5 Before reaching step four, the ALJ determined that the plaintiff had the RFC to "perform light
6 work . . . except [that] she can occasionally stoop, kneel, crouch and crawl; [and] is limited to
7 simple repetitive tasks with occasional public contact."¹⁹⁸

8 At step four, the ALJ found that the plaintiff had no past relevant work.¹⁹⁹

9 Finally, at step five, the ALJ held that the following jobs were available in the national
10 economy for the plaintiff: (1) mail clerk; (2) ampoule clerk; and (3) bakery racker.²⁰⁰ She also
11 noted that, even with more restrictive limitations, there would still be other jobs available.²⁰¹

12 The ALJ concluded that the plaintiff was not disabled.²⁰²

14 STANDARD OF REVIEW

15 Under 42 U.S.C. § 405(g), district courts have jurisdiction to review any final decision of the
16 Commissioner if the claimant initiates a suit within sixty days of the decision. A court may set
17 aside the Commissioner's denial of benefits only if the ALJ's "findings are based on legal error or
18 are not supported by substantial evidence in the record as a whole." *Vasquez v. Astrue*, 572 F.3d
19 586, 591 (9th Cir. 2009) (internal citation and quotation marks omitted); 42 U.S.C. § 405(g).
20 "Substantial evidence means more than a mere scintilla but less than a preponderance; it is such
21 relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

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23¹⁹⁵ AR 1359.
24¹⁹⁶ AR 1360.
25¹⁹⁷ AR 1361.
26¹⁹⁸ *Id.*
27¹⁹⁹ AR 1377.
28²⁰⁰ AR 1378.
²⁰¹ *Id.*
²⁰² AR 1378-79.

1 Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). The reviewing court should uphold “such
2 inferences and conclusions as the [Commissioner] may reasonably draw from the evidence.” *Mark*
3 *v. Celebrenze*, 348 F.2d 289, 293 (9th Cir. 1965). If the evidence in the administrative record
4 supports the ALJ’s decision and a different outcome, the court must defer to the ALJ’s decision
5 and may not substitute its own decision. *Tackett v. Apfel*, 180 F.3d 1094, 1097–98 (9th Cir. 1999).
6 “Finally, [a court] may not reverse an ALJ’s decision on account of an error that is harmless.”
7 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

GOVERNING LAW

10 A claimant is considered disabled if (1) he suffers from a “medically determinable physical or
11 mental impairment which can be expected to result in death or which has lasted or can be expected
12 to last for a continuous period of not less than twelve months,” and (2) the “impairment or
13 impairments are of such severity that he is not only unable to do his previous work but cannot,
14 considering his age, education, and work experience, engage in any other kind of substantial
15 gainful work which exists in the national economy. . . .” 42 U.S.C. § 1382c(a)(3)(A) & (B). The
16 five-step analysis for determining whether a claimant is disabled within the meaning of the Social
17 Security Act is as follows. *Tackett*, 180 F.3d at 1098 (citing 20 C.F.R. § 404.1520).

Step One. Is the claimant presently working in a substantially gainful activity? If so, then the claimant is “not disabled” and is not entitled to benefits. If the claimant is not working in a substantially gainful activity, then the claimant’s case cannot be resolved at step one, and the evaluation proceeds to step two. See 20 C.F.R. § 404.1520(a)(4)(i).

21 **Step Two.** Is the claimant's impairment (or combination of impairments) severe? If not,
22 the claimant is not disabled. If so, the evaluation proceeds to step three. See 20 C.F.R. §
404.1520(a)(4)(ii).

Step Three. Does the impairment “meet or equal” one of a list of specified impairments described in the regulations? If so, the claimant is disabled and is entitled to benefits. If the claimant’s impairment does not meet or equal one of the impairments listed in the regulations, then the case cannot be resolved at step three, and the evaluation proceeds to step four. See 20 C.F.R. § 404.1520(a)(4)(iii).

Step Four. Considering the claimant's RFC, is the claimant able to do any work that he or she has done in the past? If so, then the claimant is not disabled and is not entitled to benefits. If the claimant cannot do any work he or she did in the past, then the case cannot

1 be resolved at step four, and the case proceeds to the fifth and final step. See 20 C.F.R. §
2 404.1520(a)(4)(iv).

3 **Step Five.** Considering the claimant's RFC, age, education, and work experience, is the
4 claimant able to "make an adjustment to other work?" If not, then the claimant is disabled
5 and entitled to benefits. See 20 C.F.R. § 404.1520(a)(4)(v). If the claimant is able to do
6 other work, the Commissioner must establish that there are a significant number of jobs in
7 the national economy that the claimant can do. There are two ways for the Commissioner
8 to show other jobs in significant numbers in the national economy: (1) by the testimony of
9 a vocational expert or (2) by reference to the Medical-Vocational Guidelines at 20 C.F.R.,
10 part 404, subpart P, app. 2.

11 For steps one through four, the burden of proof is on the claimant. At step five, the burden
12 shifts to the Commissioner. *Gonzales v. Sec'y of Health & Human Servs.*, 784 F.2d 1417, 1419
13 (9th Cir. 1986).

14 ANALYSIS

15 The plaintiff argues that the ALJ erred by (1) misweighing the medical evidence, (2) finding
16 the plaintiff's insomnia to be nonsevere at step two, (3) finding that plaintiff did not meet mental-
17 impairment listings at step three, (4) discrediting plaintiff's testimony, (5) failing to consider third-
18 party statements, and (6) basing step five on incomplete VE hypotheticals. The plaintiff also
19 argues that the ALJ mischaracterized the evidence and repeated errors that Judges Corley and
20 Alsup identified previously.²⁰³

21 1. Whether the ALJ Erred in Weighing the Medical Evidence

22 The plaintiff argues, and the court agrees, that the ALJ erred in weighing the medical opinions.

23 The ALJ is responsible for "resolving conflicts in medical testimony and for resolving
24 ambiguities." *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014) (quoting *Andrews*, 53 F.3d
25 at 1039). In weighing and evaluating the evidence, the ALJ must consider the entire case record,
26 including each medical opinion in the record, together with the rest of the relevant evidence.
27 20 C.F.R. § 416.927(b); see *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) ("[A] reviewing

28 ²⁰³ Pl. Mot. – ECF No. 24-1 at 18–37. The plaintiff also argues that the ALJ erred because her decision
"substantially relies on bulk citation" to the medical evidence. *Id.* at 18.

1 court must consider the entire record as a whole and may not affirm simply by isolating a specific
2 quantum of supporting evidence.”) (internal quotation marks and citation omitted).

3 “In conjunction with the relevant regulations, [the Ninth Circuit has] developed standards that
4 guide [the] analysis of an ALJ’s weighing of medical evidence.” *Ryan v. Comm’r of Soc. Sec.*, 528
5 F.3d 1194, 1198 (9th Cir. 2008) (citing 20 C.F.R. § 404.1527).²⁰⁴ Social Security regulations
6 distinguish between three types of physicians: (1) treating physicians; (2) examining physicians;
7 and (3) non-examining physicians. 20 C.F.R. § 416.927(c), (e); *Lester v. Chater*, 81 F.3d 821, 830
8 (9th Cir. 1995). “Generally, a treating physician’s opinion carries more weight than an examining
9 physician’s, and an examining physician’s opinion carries more weight than a reviewing [non-
10 examining] physician’s.” *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001) (citing
11 *Lester*, 81 F.3d at 830); *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996).

12 An ALJ may disregard the opinion of a treating physician, whether or not controverted.
13 *Andrews*, 53 F.3d at 1041. “To reject [the] uncontradicted opinion of a treating or examining
14 doctor, an ALJ must state clear and convincing reasons that are supported by substantial
15 evidence.” *Ryan*, 528 F.3d at 1198 (alteration in original) (internal quotation marks and citation
16 omitted). By contrast, if the ALJ finds that the opinion of a treating physician is contradicted, a
17 reviewing court will require only that the ALJ provide “specific and legitimate reasons supported
18 by substantial evidence in the record.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)
19 (internal quotation marks and citation omitted); *see Garrison*, 759 F.3d at 1012 (“If a treating or
20 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only reject it
21 by providing specific and legitimate reasons that are supported by substantial evidence.”) (internal
22 quotation marks and citation omitted). “The opinions of non-treating or non-examining physicians
23 may serve as substantial evidence when the opinions are consistent with independent clinical
24 findings or other evidence in the record.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002).

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28²⁰⁴ The Social Security Administration promulgated new regulations, including a new § 404.1521, effective March 27, 2017. The previous version, effective to March 26, 2017, applies here.

1 An ALJ errs when he “rejects a medical opinion or assigns it little weight” without explanation
2 or without explaining why “another medical opinion is more persuasive, or criticiz[es] it with
3 boilerplate language that fails to offer a substantive basis for [his] conclusion.” *Garrison*, 759 F.3d
4 at 1012–13. “[F]actors relevant to evaluating any medical opinion, not limited to the opinion of the
5 treating physician, include the amount of relevant evidence that supports the opinion and the
6 quality of the explanation provided[,] the consistency of the medical opinion with the record as a
7 whole[, and] the specialty of the physician providing the opinion” *Orn*, 495 F.3d at 631.
8 (citing 20 C.F.R. § 404.1527(d)(3)–(6)); *see also Magallanes v. Bowen*, 881 F.2d 747, 753 (9th
9 Cir. 1989) (an ALJ need not agree with everything contained in the medical opinion and can
10 consider some portions less significant than others).

11 The ALJ also must consider the opinions of other “medical sources who are not acceptable
12 medical sources and [the testimony] from nonmedical sources.” 20 C.F.R. § 404.1527(f). The ALJ
13 is required to consider observations by “other sources” as to how an impairment affects a
14 claimant’s ability to work. *Id.* Nonetheless, an “ALJ may discount [the] testimony” or an opinion
15 “from these other sources if the ALJ gives . . . germane [reasons] for doing so.” *Molina*, 674 F.3d
16 at 1111 (internal quotations and citations omitted). “[A]n opinion from a medical source who is
17 not an acceptable medical source. . . may outweigh the medical opinion of an acceptable medical
18 source[.]” 20 C.F.R. § 404.1527(f)(1). “For example, it may be appropriate to give more weight to
19 the opinion of a medical source who is not an acceptable medical source if he or she has seen the
20 individual more often than the treating source, has provided better supporting evidence and a
21 better explanation for the opinion, and the opinion is more consistent with the evidence as a
22 whole.” *Id.*

23 The plaintiff contends that the ALJ misweighed the medical opinions from the following
24 sources: (1) treating physician Robert Gardner; (2) treating physician’s assistant Joseph Geare; (3)
25 examining psychiatrist Daniel Mandelbaum; (4) examining psychologist Philip Cushman; (5)
26 examining psychologist Molly Malone; (6) treating counselor Deborah Johnson, LCSW; (7)
27 examining physician Sheila Benrazavi; and (8) examining psychologist Melody Samuelson.
28

1 **1.1 Dr. Gardner**

2 Dr. Gardner reported various work limitations based on plaintiff's fibromyalgia.²⁰⁵ First, he
3 found that the plaintiff met the American College of Rheumatology criteria for fibromyalgia and
4 noted various symptoms that she experiences, including "chronic widespread pain" and over 20
5 tender points.²⁰⁶ Second, he identified the following exertional limitations: (1) she could walk two
6 city blocks without rest or severe pain; (2) she could sit and stand for 10 to 15 minutes at a time;
7 (3) she could sit, stand, and walk for about two hours in a total eight-hour workday; (4) she could
8 occasionally lift less than ten pounds, rarely crouch, squat, and climb stairs, and never twist, stoop,
9 or climb ladders.²⁰⁷ Finally, he said that the plaintiff would be off task 15% of the time, "incapable
10 of even 'low stress' work," and would miss work more than four days a month.²⁰⁸

11 Because Dr. Gardner's findings are contradicted by Dr. Benrazavi's findings, the ALJ was
12 required to provide specific and legitimate reasons supported by substantial evidence to discount
13 his opinion. *See Garrison*, 759 F.3d at 1012.

14 The plaintiff argues that the ALJ erred by giving little weight to Dr. Gardner's findings of
15 work limitations in part because (1) the ALJ mischaracterized the evidence about whether the
16 plaintiff was in "acute distress" and did not explain why the lack of "joint erythema" and
17 "synovitis" discounted Dr. Gardner's findings, and (2) the ALJ exaggerated plaintiff's daily
18 activities.²⁰⁹

19 The ALJ's reliance on the lack of "acute distress," "joint erythema," and "synovitis" are not
20 specific and legitimate reason for discrediting Dr. Gardner. First, as a basis for according Dr.
21 Gardner's opinion little weight, the ALJ explained that the plaintiff "presented on numerous
22 occasions from 2015 to 2018 in 'no acute distress,' with otherwise limited abnormal objective

24

²⁰⁵ AR 384–87; *see also* AR 511 (Judge Corley's summarizing Dr. Gardner's findings).

25 ²⁰⁶ AR 384.

26 ²⁰⁷ AR 385–86.

27 ²⁰⁸ AR 387.

28 ²⁰⁹ Pl. Mot. – ECF No. 24-1 at 18–23, 26–27.

1 exam findings.”²¹⁰ But that is incorrect. On many occasions, the plaintiff presented with acute
 2 distress to P.A. Geare, and the record also documents her mental-health issues.²¹¹ On at least one
 3 occasion, despite P.A. Geare’s note of “no acute distress” in general appearance, the plaintiff cried
 4 through her appointment and expressed suicidal thoughts.²¹² Moreover, the ALJ did not explain
 5 why “no acute distress” undermines the diagnosis. *Cf. Reinertson v. Barnhart*, 127 F. App’x 285,
 6 290 n.2 (9th Cir. 2005) (“One who suffers from fibromyalgia, a condition marked by ‘chronic pain
 7 through the body’ . . . is not necessarily in ‘acute distress.’ Without more, that term does not
 8 constitute an objective medical finding that is inconsistent with severe fibromyalgia”) (cleaned
 9 up); *Norman v. Berryhill*, No. 17-cv-04108-SI, 2018 WL 4519952, at *9 (N.D. Cal. Sept. 19,
 10 2018) (“presenting as ‘pleasant and cooperative’” in demeanor “is not inconsistent with allegations
 11 of depression”).

12 Second, the ALJ gave Dr. Gardner’s opinion little weight because the plaintiff denied “joint
 13 erythema,” and Dr. Birnbaum found no “synovitis.”²¹³ The ALJ did not explain, however, why
 14 this warranted giving little weight to Dr. Gardner’s limitation findings. *Cf. Long v. Colvin*, No. 13-
 15 cv-05716-SI, 2015 WL 971198, at *6 (N.D. Cal. Mar. 3, 2015) (“the ALJ must not only identify
 16 the conflicting information, but [also must] provide her interpretation thereof, and explain why her
 17 interpretation, rather than the treating physician’s, prevails”). The plaintiff’s brief also suggest that
 18 these may indicate rheumatoid arthritis and not fibromyalgia.²¹⁴

19 Similarly, the ALR erred by discrediting the opinion based on the plaintiff’s daily activities.²¹⁵
 20 “The Social Security Act does not require that claimants be utterly incapacitated to be eligible
 21 for benefits, and many home activities may not be easily transferable to a work environment where
 22 it might be impossible to rest periodically or take medication.” *Fair v. Bowen*, 885 F.2d 597, 603
 23

24 ²¹⁰ AR 1372.

25 ²¹¹ See, e.g., AR 805, 814, 824, 833, 842, 845, 981, 1000, 1007, 1011, 1062, 1065, 1212, 1293, 1700,
 1707, 1715, 1896, 1908, 1958, 1960.

26 ²¹² AR 2009–12.

27 ²¹³ AR 1372.

28 ²¹⁴ Pl. Mot. – ECF No. 24-1 at 20–21.

²¹⁵ AR 1372–73.

1 (9th Cir. 1989) (citation omitted). The Ninth Circuit has held that “disability claimants should not
2 be penalized for attempting to lead normal lives in the face of their limitations.” *Reddick*, 157 F.3d
3 at 722.

4 First, the plaintiff’s daily activities are not a basis for uniformly discrediting Dr. Gardner’s
5 opinion. Second, as Judge Corley said, “[i]t is improper to assume that [the] [p]laintiff would have
6 no difficulties in a work setting simply because she performs household chores or find medication
7 and counseling helpful.”²¹⁶ Third, the ALJ did not specify how the plaintiff’s daily activities
8 contradicted Dr. Gardner’s findings. The ALJ said that the plaintiff’s caring of her children was
9 inconsistent with a disabled person’s abilities, but the record is uncontested that the plaintiff
10 cannot care for them alone and needs help from her family.²¹⁷

11 In sum, the court finds that the ALJ erred in according Dr. Gardner little weight.

12 1.2 P.A. Geare

13 The plaintiff contends that ALJ erred in giving little weight to treating P.A. Geare’s opinion.
14 The court agrees.

15 P.A. Geare is an “other source.” *See Molina*, 674 F.3d at 1111. The ALJ thus must provide
16 germane reasons for discounting his opinion. The ALJ has not done so.

17 First, to the extent the ALJ characterized P.A. Geare as consistently reporting that the plaintiff
18 was not in “acute distress,” this is incorrect and thus is an insufficient reason (as the court said in
19 the last section).

20 Second, the ALJ accorded little weight to P.A. Geare’s opinion, in part, because (1) the record
21 generally showed conservative treatment and (2) he is not an acceptable medical source.²¹⁸ First,
22 as the plaintiff contends, it is unclear what the ALJ determined to be “conservative” treatment, and
23 the record does not reflect that more aggressive treatment options exist.²¹⁹ *Cf. Lapeirre-Gutt v.*
24 *Astrue*, 382 F. App’x 662, 664 (9th Cir. 2010) (“The record does not reflect that more aggressive

25
26 ²¹⁶ AR 530.
27 ²¹⁷ AR 1373.
28 ²¹⁸ AR 1374–75.
²¹⁹ Pl. Mot. – ECF No. 24-1 at 23–24.

1 treatment options are appropriate or available. A claimant cannot be discredited for failing to
2 pursue non-conservative treatment options where none exists”). Second, P.A. Geare was a treating
3 source and saw the plaintiff once or twice a month for six years, and the ALJ’s summary rejection
4 of his opinion based on a fact error and his position was not a germane reason to discount his
5 treatment-based opinion. *See Olmstead v. Colvin*, No. 15-cv-02656-NJV, 2016 WL 3611881, at *4
6 (N.D. Cal. July 6, 2016) (finding failure to provide germane reasons to discount nurse
7 practitioner’s opinion to be “especially egregious where the nurse practitioner saw Plaintiff on
8 several occasions and her records make direct references to Plaintiff’s limitations and ability to
9 work”).

10 **1.3 Dr. Mandelbaum**

11 The plaintiff argues that the ALJ erred by giving “limited weight” to examining psychiatrist
12 Dr. Mandelbaum’s assessment because (1) the ALJ repeated errors identified by Judges Corley
13 and Alsup, (2) Judge Corley already found that Dr. Mandelbaum’s opinion was supported by the
14 medical record, and (3) the ALJ relied on erroneous “no acute distress” findings.²²⁰ Because Dr.
15 Mandelbaum’s limitations findings are contradicted by Dr. Samuelson’s findings, the ALJ must
16 provide specific and legitimate reasons supported by substantial evidence to discount his opinion.
17 *See Garrison*, 759 F.3d at 1012. The ALJ did not.

18 To the extent that the ALJ accorded only “limited” weight due to (1) Dr. Mandelbaum’s failure
19 to express his opinion “in terms of vocational functioning” and (2) his review of only the 2011
20 record, Judges Corley and Alsup already rejected those assessments, and the court agrees with
21 their reasonings.²²¹ Judge Corley found that “numerous medical records and opinions support Dr.
22 Mandelbaum’s findings.”²²² The court affirms that assessment. Indeed, Dr. Mandelbaum’s
23 findings of work impairments — including moderate-to marked impairments in the plaintiff’s
24 ability to understand, remember, and carry out simple instructions and ability to interact

25
26 ²²⁰ *Id.* at 27–28.

27 ²²¹ AR 526–27, 1501.

28 ²²² AR 528.

1 appropriately with the public and co-workers²²³ — were echoed by other examining and treating
2 sources such as Dr. Malone and LCSW Johnson.²²⁴ And finally, the ALJ’s discrediting the opinion
3 based on “no acute distress” fails for the reasons stated above.

4 In sum, the ALJ thus failed to properly weigh Dr. Mandelbaum’s opinion.

5 **1.4 Dr. Cushman**

6 The ALJ accorded little weight to Dr. Cushman’s findings that plaintiff would have difficulties
7 with regular attendance, completing a normal workday or work week, and working with
8 supervisors, co-workers and the general public.²²⁵ The ALJ assigned little weight because (1) Dr.
9 Cushman did not have the benefit of later records, (2) his findings are not consistent with later
10 records of normal examinations and lack of acute distress, (3) his findings contradict the plaintiff’s
11 activities of daily living showing that the plaintiff can clean, shop, and care for her young children,
12 and (4) his conclusions are inconsistent with the Global Assessment of Functioning (“GAF”)
13 score of 60.²²⁶ Because Dr. Cushman’s limitations findings are contradicted by Dr. Samuelson, the
14 ALJ must provide specific and legitimate reasons supported by substantial evidence to discount
15 his opinion. *See Garrison*, 759 F.3d at 1012. The ALJ erred in weighing Dr. Cushman’s opinion.

16 As Judge Corley explained, Dr. Cushman’s limited review of the record on its own is not a
17 sufficient reason to discount his opinion.²²⁷ As discussed above, the ALJ’s finding of “no acute
18 distress” and his characterization of the plaintiff’s daily activities, are not specific and legitimate
19 reasons. Moreover, other medical opinions support Dr. Cushman’s findings. For example,

21 ²²³ AR 224.

22 ²²⁴ *See, e.g.*, AR 1798 (Dr. Malone’s finding moderate to significant impairments in ability to interact
23 with coworkers and the public); AR 2002 (Ms. Johnson’s finding marked limitation in abilities to (1)
understand, remember, and apply information, and (2) interact with others).

24 ²²⁵ AR 253, 1369.

25 ²²⁶ AR 1369. A GAF score purports to rate a subject’s mental state and symptoms; the higher the
rating, the better the subject’s coping and functioning skills. *See Garrison v. Colvin*, 759 F.3d 995,
1002 n.4 (9th Cir. 2014). A person with a GAF score of 51 to 60 may connote “moderate symptoms”
(e.g. a flat and circumstantial speech and occasional panic attacks) or moderate difficulty in social,
occupational, or school and chores-related functioning (e.g. few friends and conflicts with peers or co-
workers). *See id.*

26 ²²⁷ AR 530.

1 Dr. Malone found that the plaintiff’s abilities to maintain regular work attendance and interact
2 with coworkers and the public were moderately to significantly impaired.²²⁸ Finally, the ALJ erred
3 by concluding, without explanation, that Dr. Cushman’s assessment of a GAF score of 60, which
4 reflects moderate symptoms or moderate functional difficulties, is “inconsistent with [his finding
5 of plaintiff’s] inability to attend work regularly.”²²⁹

6 In sum, the ALJ erred in weighing Dr. Cushman’s opinion.

7 **1.5 Ms. Johnson**

8 Ms. Johnson is a social worker who provided psychotherapy treatment to the plaintiff. She is
9 an “other source.” The ALJ thus must provide germane reasons for rejecting her opinion. *See*
10 *Molina*, 674 F.3d at 1111. The ALJ accorded little weight to Ms. Johnson’s July 2016 assessment
11 and partial weight to her October 2018 assessment, in part, because that (1) there are no treatment
12 records from Ms. Johnson to support her opinion; and (2) the longitudinal record does not support
13 her findings.²³⁰ These reasons are not germane.

14 First, the record contains two years of Ms. Johnson’s treatment notes documenting the
15 plaintiff’s struggles with bipolar disorder, depression, and insufficient eating or sleeping.²³¹
16 Second, the court already rejected as insufficient the ALJ’s findings of no acute distress and
17 conservative treatment.

18 **1.6 Dr. Malone**

19 The ALJ also erred by giving little weight to examining psychologist Dr. Malone’s opinion.²³²

20 The ALJ gave little weight to Dr. Malone’s opinion for the following reasons: (1) her findings
21 of work restrictions internally “conflict with [her] exam findings showing normal appearance,
22 speech, orientation, intelligence, fund of knowledge, judgment, thought process and content;” (2)

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25²²⁸ AR 1798.
26²²⁹ AR 1370.
27²³⁰ AR 1373–74.
28²³¹ AR 237–75.
29²³² The plaintiff refers to Dr. Malone as Dr. Malloy. Pl. Mot. – ECF No. 24-1 at 28–29.

1 the plaintiff's record showed conservative treatment with no "psychiatric hospitalizations or 5150
2 placements;" (3) the plaintiff did not have acute distress; and (4) the limitations findings were
3 inconsistent with the plaintiff's ability to care for her young children.²³³ Because Dr. Malone's
4 findings are contradicted by Dr. Samuelson's findings, the ALJ must provide specific and
5 legitimate reasons supported by substantial evidence to discount her opinion. *Garrison*, 759 F.3d
6 at 1012. The ALJ did not do so.

7 First, the ALJ does not explain how the plaintiff's normal appearance, thought process, or
8 judgment during the examination translates to no work impairments, thus rendering Dr. Malone's
9 opinion internally inconsistent. Indeed, Dr. Malone observed that the plaintiff's attention was
10 "limited," her concentration, calculation, and memory were "poor," and her mood was
11 "anxious."²³⁴ *Cf. Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) ("the ALJ improperly
12 cherry-picked some of [examining physician's] characterizations of [the plaintiff's] rapport and
13 demeanor instead of considering these factors in the context of [the physician's] diagnoses and
14 observations of impairment."). Next, the ALJ's characterization of "conservative treatment" and a
15 lack of psychiatric hospitalization is similarly unavailing, both for the reasons set forth above and
16 because it is not apparent, and the ALJ did not explain, why a lack of "5150 placements"
17 necessarily contradicted work impairments found by Dr. Malone. Finally, the remaining reasons
18 are not specific and legitimate as discussed above.

19 **1.7 Dr. Benrazavi**

20 The ALJ also erred by according "great weight" to examining physician Dr. Benrazavi's
21 opinion that the plaintiff (essentially) had no physical limitations that would prevent her from
22 working.

23 Citing the record about mild degenerative-disc disease, the ALJ found that Dr. Benrazavi's
24 findings of the plaintiff's physical limitations were supported by the longitudinal treatment.²³⁵ But

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26 ²³³ AR 1370-71.
27 ²³⁴ AR 1797.
28 ²³⁵ AR 1371.

1 as Judges Alsup and Corley explained, the ALJ must do more than merely identify the evidence
2 and instead must provide her interpretation of the evidence.²³⁶ Here, the ALJ never explained how
3 mild disc degeneration supports Dr. Benrazavi's limitations, and she did not address the
4 contradicting findings of treating physician Dr. Gardner and treating P.A. Geare. Also, to the
5 extent the ALJ based her reasoning on the lack of "acute distress," it is not a specific and
6 legitimate reason, as discussed above. Moreover, the ALJ did not consider other factors such as
7 the examining relationship, the nature of the examining relationship, or the length or frequency of
8 the examination, especially given the plaintiff's long histories with treating sources. *See* 20 C.F.R.
9 § 404.1527(c).

10 In sum, the ALJ erred in weighing Dr. Benrazavi's opinion.

11 1.8 Dr. Samuelson

12 Finally, the ALJ erred by according "significant" weight to examining psychologist Dr.
13 Samuelson's opinion that the plaintiff's mental-health issues did not preclude her from working.

14 The ALJ assigned great weight to Dr. Samuelson's mild-to-none mental limitations because
15 (1) Dr. Samuelson "had the opportunity to conduct a comprehensive examination and interview of
16 the claimant," and (2) her findings are consistent with the record.²³⁷ The plaintiff contends that this
17 was an error because the ALJ failed to consider the examining relationship, the length and nature
18 of the relationship, and other factors under 20 C.F.R. § 404.1527(c).

19 First, the ALJ's finding that Dr. Samuelson must be significantly credited because she
20 conducted a "comprehensive examination" is conclusory. The ALJ did not explain how this one-
21 time mental examination was "comprehensive." Indeed, by Dr. Samuelson's account, she said that
22 her findings were "gathered during this one time-limited mental status evaluation[;] [and] [s]hould
23 there be discrepancies . . . [,] it is recommended that the claimant's psychiatric diagnosis and
24 symptom severity be verified through examination of medical records from past or recent

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27 ²³⁶ AR 523, 1501.
28 ²³⁷ AR 1370.

1 treatment providers.”²³⁸ Second, Dr. Samuelson’s opinion did not discuss other mental-health
2 issues present in the plaintiff’s medical records.²³⁹ Third, Dr. Samuelson’s opinion is inconsistent
3 with express findings of work-preclusive limitations in the longitudinal record, such as the
4 opinions of treating sources (P.A. Geare and LCSW Johnson) and the opinions of the examining
5 sources (psychiatrist Dr. Mandelbaum, and psychologists, Drs. Cushman and Malone).

6 * * *

7 In sum, the ALJ erred by mis-weighing the medical evidence.

9 **2. Whether the ALJ Erred by Discounting the Plaintiff’s Testimony**

10 The plaintiff contends that the ALJ erred by discounting her testimony because the ALJ
11 mischaracterized the medical evidence and the record regarding her improvement while on
12 medication.

13 In assessing a claimant’s credibility, an ALJ must make two determinations. *Molina*, 674 F.3d
14 at 1112 (9th Cir. 2012). “First, the ALJ must determine whether [the claimant has presented]
15 ‘objective medical evidence of an underlying impairment which could reasonably be expected to
16 produce the pain or other symptoms alleged.’” *Id.* (quoting *Vasquez*, 572 F.3d at 591). Second, if
17 the claimant produces that evidence, and “there is no evidence of malingering,” the ALJ must
18 provide “specific, clear and convincing reasons for” rejecting the claimant’s testimony regarding
19 the severity of the claimant’s symptoms. *Id.* (internal quotation marks and citations omitted).

20 “At the same time, the ALJ is not ‘required to believe every allegation of disabling pain, or
21 else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. §
22 423(d)(5)(A).’” *Id.* (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). “Factors that an
23 ALJ may consider in weighing a claimant’s credibility include reputation for truthfulness,
24 inconsistencies in testimony or between testimony and conduct, daily activities, and unexplained,
25 or inadequately explained, failure to seek treatment or follow a prescribed course of treatment.”

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27 ²³⁸ AR 1021.

28 ²³⁹ AR 1022 (reviewing only one psychiatric record dated December 9, 2014 by P.A. Geare).

1 *Orn*, 495 F.3d at 636 (internal quotation marks omitted). “The ALJ must identify what testimony
2 is not credible and what evidence undermines the claimant’s complaints.” *Burrell v. Colvin*, 775
3 F.3d 1133, 1138 (9th Cir. 2014); *see, e.g.*, *Morris v. Colvin*, No. 16-CV-0674-JSC, 2016 WL
4 7369300, at *12 (N.D. Cal. Dec. 20, 2016).

5 In rejecting the plaintiff’s testimony, the ALJ held that “the longitudinal record and medical
6 findings and notes fail to corroborate the level of dysfunction alleged by the claimant.”²⁴⁰ The
7 court has held that this reasoning was error. The ALJ’s rejection of the plaintiff’s testimony was
8 thus error too. As the plaintiff recounts, the treatment records establish that “ gabapentin and
9 Lyrica” did not help her fibromyalgia.²⁴¹ The medical record also shows her mental-health
10 diagnoses and physical limitations. As discussed above, the ALJ did not address these issues.

12 **3. Whether the ALJ Erred at Step Two**

13 The ALJ also erred at step two by mischaracterizing the evidence to conclude that the
14 plaintiff’s insomnia was non-severe.

15 At step two of the five-step sequential inquiry, the ALJ determines whether the claimant has a
16 medically severe impairment or combination of impairments. *Smolen*, 80 F.3d at 1290. The ALJ
17 must consider the record as a whole, including evidence that both supports and detracts from its
18 final decision. *Reddick*, 157 F.3d at 720. An impairment is not severe if it does not significantly
19 limit the claimant’s mental or physical abilities to do basic work activities. 20 C.F.R. § 404.1522.
20 “Basic work activities are abilities and aptitudes necessary to do most jobs, including, for
21 example, walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling.”
22 *Smolen*, 80 F.3d at 1290 (cleaned up); *see also Monteith v. Comm’n of Soc. Sec.*, No. 18-cv-
23 04481-DMR, 2020 WL 789823, at *2 (N.D. Cal. Feb. 17, 2020).

24 “[T]he step two inquiry is a de minimis screening device to dispose of groundless claims.”
25 *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137 at 153–54 (1987)). Thus, “[a]n

27 ²⁴⁰ AR 1362.

28 ²⁴¹ AR 1910; *see also* Pl. Mot. – ECF No. 24-1 at 34–36.

1 impairment or combination of impairments can be found ‘not severe’ only if the evidence
 2 establishes a slight abnormality that has no more than a minimal effect on an individual[‘]s ability
 3 to work.” *Id.* (internal quotation marks omitted) (citing SSR 85–28; *Yuckert v. Bowen*, 841 F.2d
 4 303, 306 (9th Cir.1988)).

5 Here, the ALJ found that the plaintiff’s insomnia was not severe because “there is no ongoing
 6 testing or treatment for these conditions.”²⁴² This conclusion is incorrect. The record establishes
 7 that her ongoing treatment for insomnia includes prescriptions for Valium, Restoril, Seroquel, and
 8 Temazepam.²⁴³

9

10 **4. Whether the ALJ Erred at Step Three**

11 The plaintiff contends that the ALJ improperly weighed the medical evidence in concluding
 12 that her mental impairments did not meet any listings.²⁴⁴

13 At step three of the five-step framework, “[i]f a claimant has an impairment or combination of
 14 impairments that meets or equals a condition outlined in the ‘Listing of Impairments,’ then the
 15 claimant is presumed disabled.” *Lewis v. Apfel*, 236 F.3d 503, 512 (citing 20 C.F.R. §
 16 404.1520(d)). “An ALJ must evaluate the relevant evidence before concluding that a claimant’s
 17 impairments do not meet or equal a listed impairment. A boilerplate finding is insufficient to
 18 support a conclusion that a claimant’s impairment does not do so.” *Id.* (citing *Marcia v. Sullivan*,
 19 900 F.2d 172, 176 (9th Cir. 1990)). “Medical equivalence will be found ‘if the medical findings
 20 are at least equal in severity and duration to the listed findings.’” *Marcia*, 900 F.2d at 175–76
 21 (quoting 20 C.F.R. § 404.1526). Accordingly, at step three, “the ALJ must explain adequately his
 22 evaluation of the alternative tests and the combined effects of the impairments” to determine
 23 whether a claimant equals a Listing. *Id.* at 176.

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²⁴² AR 1358.

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²⁴³ See, e.g., AR 320, 327, 364, 1703, 2015.

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²⁴⁴ Pl. Mot. – ECF No. 24-1 at 24–25.

1 As discussed above, the ALJ misweighed the medical opinions. That affects the step-three
2 determination. The ALJ thus erred here too.

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4 **5. Whether the ALJ Erred by Discounting Third-Party Statements**

5 The plaintiff argues that the ALJ erred because she did not mention the plaintiff's former
6 husband's statement and did not weigh the statements of the plaintiff's fiancé, mother, and
7 sister.²⁴⁵

8 The ALJ must also consider "other source" testimony and evidence from a layperson. *Ghanim*,
9 763 F.3d at 1161; *Molina*, 674 F.3d at 1111; *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009)
10 ("In determining whether a claimant is disabled, an ALJ must consider lay witness testimony
11 concerning a claimant's ability to work") (cleaned up). "Descriptions by friends and family
12 members in a position to observe a claimant's symptoms and daily activities have routinely been
13 treated as competent evidence." *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). It is
14 competent evidence and "cannot be disregarded without comment." *Nguyen v. Chater*, 100 F.3d
15 1462, 1467 (9th Cir. 1996). The Ninth Circuit has not "required the ALJ to discuss every witness's
16 testimony on an individualized, witness-by-witness basis." *Molina*, 674 F.3d at 1114. An ALJ may
17 "point to" reasons already stated with respect to the testimony of one witness to reject similar
18 testimony by a second witness. *Id.*

19 Here, the ALJ did identify the statements.²⁴⁶ To the extent that the court already rejected the
20 ALJ's failure to consider these statements in holding that the plaintiff's daily activities in caring
21 for her children are inconsistent with a disabled person, that analysis applies here too.

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²⁴⁵ *Id.* at 36.

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²⁴⁶ AR 1376–77.

1 **6. Whether the ALJ erred at Step Five**

2 Finally, the plaintiff argues that the ALJ erred at step five because the hypotheticals were
3 based on an erroneous RFC. Because the ALJ erred in weighing the medical opinions, and the
4 RFC is predicated on those opinions, the ALJ erred here too.

5

6 **7. Remand for Determination of Benefits**

7 The court has “discretion to remand a case either for additional evidence and findings or for an
8 award of benefits.” *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen*,
9 80 F.3d at 1292); *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989) (“The decision whether
10 to remand for further proceedings or simply to award benefits is within the discretion of [the]
11 court.”) (citing *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir. 1987)).

12 In deciding whether to remand a social-security case for further proceedings or for an
13 immediate award of benefits, the Ninth Circuit has promulgated the “credit-as-true” rule. *See*
14 *Garrison*, 759 F.3d at 1019–23; *Treichler v. Comm'r of Soc. Sec. Admin*, 775 F.3d 1090, 1100–02
15 (9th Cir. 2014); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004); *see also Connell*, 340
16 F.3d 871, 876 (9th Cir. 2003); *Hammock v. Bowen*, 879 F.2d 498 (9th Cir. 1989). The credit-as-
17 true rule applies to both “medical opinion evidence” and to “claimant testimony.” *Garrison*, 759
18 F.3d at 1020. Under the credit-as-true rule, a reviewing court may credit evidence that was
19 rejected during the administrative process and remand for an immediate award of benefits if: (1)
20 the ALJ failed to provide “legally sufficient reasons” for rejecting the evidence; (2) “the record
21 has been fully developed and further administrative proceedings would serve no useful purpose”;
22 and (3) “if the improperly discredited evidence were credited as true, the ALJ would be required to
23 find the claimant disabled on remand.” *Id.* (citing *Ryan*, 528 F.3d at 1202; *Lingenfelter*, 504 F.3d
24 at 1041; *Orn*, 495 F.3d at 640; *Benecke*, 379 F.3d at 595; *Smolen*, 80 F.3d at 1292). If these three
25 conditions are met, the court may remand for an award of benefits unless “an evaluation of the
26 record as a whole creates serious doubt that a claimant is, in fact, disabled.” *Garrison*, 759 F.3d at
27 1021; *see also McCartey*, 298 F.3d at 1076 (noting court’s “discretion”).

1 Generally, “[i]f additional proceedings can remedy defects in the original administrative
2 proceeding, a social security case should be remanded.”” *Garrison*, 759 F.3d at 1019 (quoting
3 *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981)) (alteration in original); *Treichler*, 775 F.3d
4 at 1099, 1106 (“a reviewing court is not required to credit claimants’ allegations regarding the
5 extent of their impairments as true merely because the ALJ made a legal error in discrediting their
6 testimony;” if “the reviewing court simply cannot evaluate the challenged agency action on the
7 basis of the record before it, the proper course, except in rare circumstances, is to remand to the
8 agency for additional investigation or explanation.”) (citations omitted); *see also Dominguez v.*
9 *Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (“Unless the district court concludes that further
10 administrative proceedings would serve no useful purpose, it may not remand with a direction to
11 provide benefits.”); *McCartey*, 298 F.3d at 1076 (remand for award of benefits is discretionary);
12 *McAllister*, 888 F.2d at 603 (remand for award of benefits is discretionary); *Connett*, 340 F.3d at
13 876 (finding that a reviewing court has “some flexibility” in deciding whether to remand).

14 Here, the court finds the three conditions are satisfied and remands with an instruction for an
15 award for benefits.

16 First, as discussed above, the ALJ mischaracterized medical records and opinions.

17 Second, there are “no outstanding issues that must be resolved before a determination of
18 disability can be made.” *Garrison*, 759 F.3d at 1019–20, n.26; *see also Treichler*, 775 F.3d at
19 1108, 1110 (Tashima J., dissenting) (noting the limited situations where the Ninth Circuit has
20 determined that there were outstanding issues to be considered or resolved by the ALJ warranting
21 a remand without instructions to award benefits). The plaintiff’s application for benefits has been
22 pending for almost a decade, and multiple treating and examining sources have identified the
23 plaintiff’s mental and physical limitations, as noted above.

24 Third, it is clear from the record that the ALJ would be required to find the plaintiff disabled if
25 the improperly discredited evidence is credited as true. The court thus remands for the calculation
26 and award of benefits.

27
28

CONCLUSION

The court grants the plaintiff's motion for summary judgment, denies the Commissioner's cross-motion for summary judgment, and remands the case for the calculation and award of benefits.

IT IS SO ORDERED.

Dated: July 20, 2020

LAUREL BEELER
United States Magistrate Judge

United States District Court
Northern District of California